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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

The SUCCESSION of JUAN SERRALLES, by their Attorney in fact, EDUARDO WELLENKAMP,
Appellants,
vs.
BELEN ESBRI, widow of Cartagena,
Appellee.

Appeal from Supreme Court of Porto Rico.

No. 65.

BRIEF AND ARGUMENT FOR THE APPELLANTS.

JAMES S. HARLAN.
ATTORNEY FOR APPELLANTS.

THE OUNTHORP-WARREN PRINTING CO., 116 RANDOLPH STREET, CHICAGO

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The SUCCESSION of JUAN SERRALLES, by their Attorney in fact, EDUARDO WELLENKAMP, *Appellants,* *vs.* **BELEN ESBRI, widow of Cartegena,** *Appellee.*	Appeal from Supreme Court of Porto Rico No. 65.

This is an appeal from a judgment entered on June 28, 1902, in the Supreme Court of Porto Rico affirming a judgment entered on September 17, 1901, in the District Court of Ponce, in an action known in the Spanish law as a "declaratory action." The case bears some analogy to foreclosure proceedings familiar to the courts of the United States in that it is an effort to collect money due upon a mortgage of real estate. The final order of the lower court embraces not only the interest due when the suit was started but the interest accruing subsequently as well as the installments of principal that subsequently became due.

The appeal to this court is based upon a federal question. And in its result to the appellants the final order of the lower court may fairly be said to involve an amount in excess of $5,000 exclusive of interest and costs.

STATEMENT OF FACTS.

The sugar estate of thirteen hundred *cuerdas*, known in Porto Rico as the "Ursula" plantation, is situated in the Cintrona ward of the municipality of Juana Diaz. Prior to the time involved on this record the title to the property seems to have rested jointly in several different persons. The result was a litigation in which there was finally set over in fee simple to Don Jose Nicholas de Cartegena y Mangual an undivided interest equivalent to 18 per cent. of the value of the plantation then estimated at the sum of 80,000 *pesos*. Subsequently Sr. Cartegena arranged a sale of his undivided interest to Don Juan Serralles y Colon for the sum of 18,000 *pesos*, to be paid in certain installments, with interest at the rate of 10 per cent. per annum, in the manner provided in the deed of "purchase and mortgage" (Rec., 14) executed by the parties on September 1, 1894, before Sr. Joaquin Mayoral of the College of Notaries. The payment of the several installments with interest thereon, as they matured, was secured in the same instrument by a mortgage upon the undivided interest so purchased by Sr. Serralles. (Rec., 14-18.)

Within a few days after the date of this transaction, the fact developed that Sr. Cartegena had originally acquired his undivided interest in the plantation during his marriage to his first wife. According to the law, it was therefore property that pertained to the "conjugal partnership." The death of his first wife, after the undivided interest was so acquired by Sr.

Cartegena and before its sale to Sr. Serralles, had dissolved the conjugal partnership, and that portion of the undivided interest that pertained to the wife by virtue of the conjugal relation, became the property of her minor children. (Rec., 23.) They ought therefore to have been joined with their father as grantors in the conveyance to Sr. Serralles. But this requirement had been overlooked.

To correct the blunder in the first deed proper proceedings were had, the details of which are not pertiment to this discussion. It will suffice to say that on September 14, 1894, the undivided interest of Sr. Cartegena and his minor children in the property mentioned, the whole value of which was 18,000 *pesos*, was apportioned among them by the court in the proportion of 12,133 *pesos* and 33⅓ *centavos* to the father and 5,866 *pesos* and 66⅔ *centavos* to his minor children. The sale of the property to Sr. Serralles was then carried out, proper authority to do so having been given by the court on behalf of the minor children. (Rec., 23.) The transaction with Sr. Serralles, as thus reformed, became effective in a second deed of "sale and mortgage" dated on October 6, 1894. (Rec., 20.)

It thus happened that when Sr. Cartegena subsequently died there appeared as item 3 upon the inventory of his estate (Rec., 3) a claim against Sr. Serralles for 12,133 *pesos* and 33⅓ *centavos*. Cartegena had married again and in the division of his estate, made after his death with the approval of a family council for his minor children, Dona Belen Esbri y Rubert, his second wife and widow and the appellee

herein, was awarded in usufruct the sum of 1,365 *pesos*. This amount included 200 *pesos* of household effects, and an interest in the mortgage indebtedness above mentioned of 1,165 *pesos*. (Rec., 1.) On the face of the pleadings the ostensible object of the suit was to force the appellants to pay the 1,165 *pesos* to the appellee in American dollars. The real purpose of it, as shown hereafter, was to establish that basis of payment for the whole unpaid balance of the indebtedness, amounting to about 12,000 *pesos*.

The deed of purchase and mortgage of September 1, 1894, above referred to, contained a clause, the general substance of which was incorporated in many other documents evidencing agreements and other transactions entered into in Porto Rico at about that time. (Rec., 12. 29, 30.) The clause is not preserved in Spanish on this record. But as translated into English by the official translator of the Supreme Court of Porto Rico, it reads as follows (Rec., 17):

> Second Clause. The said sale is effected in consideration of the sum of eighteen thousand *pesos*, commercial money, which shall be paid by the purchaser, Juan Serralles y Colon, who is obligated thereto by the party present, Eduardo Wellenkamp y Chelva, and will be received by the party present, Jose Nicolas de Cartegena, in the following instalments: Two thousand *pesos*, on the fifteenth day of July of the year 1898; two thousand *pesos*, on the same day and month of the year 1899; an equal sum of two thousand *pesos*, on the fifteenth of July of the year 1900; and three thousand *pesos*, on the fifteenth day of July of the years 1901 to the year 1904, both inclusive, *all of which to be paid in the money current in the commerce whatever may be the coinage of the*

> *money that as such is in circulation or is accepted in this province, at the rate of one hundred centavos (cents) of the money in circulation for each peso,* excluding all kinds of paper money in circulation or to be issued, even if its circulation should be compulsory.

The partition of the respective interests in the property of the father and his children necessitated a different arrangement, in the amended deed of October 6, 1894, with respect to the amounts of the several installments to be paid on account of the agreed purchase price. But the clause in the amended deed that was intended to regulate the kind of money in which the installments might be paid was substantially the same as the corresponding clause in the deed of September 1, 1894. The only difference between them on this record is that the official translator in the first deed, preserves in the English text the Spanish word "centavos" and endeavors to explain it by adding "(cents)" after it (*supra*), as if they were of equivalent meaning. In the translation of the second deed he omits the word "centavos" of the Spanish text and adopts the English word "cents" as a proper equivalent.

In the amended deed as thus translated the clause reads as follows (Rec., 24):

> all these payments shall be made in current commercial money, whatever the coinage may be of the money which, with such character, be in circulation, or accepted in this province, *at the rate of one hundred* CENTS *of the circulating medium for each peso.*

The controversy turns entirely upon this clause. Dona Belen Esbri, the appellee, upon finding it in the

mortgage conceived the thought that the indebtedness, originally incurred in Mexican *pesos* of the value in our American money of fifty-seven cents each, ought now to be paid in American gold dollars—a dollar for each *peso*. The American money was then in circulation. It was the current commercial money, and was not only generally accepted, but was the only money to be found in the island. What could be more simple, then, than to require the payment of the debt in American dollars! All that was necessary was to call the *centavo* a cent and the thing was done. By disregarding the question of relative values and translating the Spanish word "centavo" into the English word "cent" the clause in question would stand as an express agreement to pay the debt "*at the rate of one hundred* CENTS *of the circulating medium for each peso.*"

Such was the thrifty suggestion of Dona Belen Esbri. And the advantage to the creditors of this course of reasoning was manifest, for instead of the 18,000 Mexican *pesos,* worth about $10,260 in American money, the debtor would be required to pay 18,000 dollars in the new circulating medium. But her contention was not so remarkable as is the fact that both the trial court and the Supreme Court of the island upheld her in it and entered a judgment against the appellants which, if part of the debt had not already been paid before the American occupation of the island, would result in an addition of $7,740 to an indebtedness which when incurred amounted to only $10,260.

But before entering upon a discussion of the matter a brief statement of some further facts that appear on the record will serve to throw additional light upon the questions involved.

At the time of the execution of both deeds Mexican money was in circulation in Porto Rico. The unit was the silver *peso,* worth, as heretofore said, about fifty-seven cents in American money. (Rec., 12.) One hundred copper *centavos* made a *peso.* But the withdrawal of this money from the island had been officially announced by the Spanish government *more than a year prior to the date of the two deeds of purchase and mortgage* above referred to. Undoubtedly this official announcement of a change of money had been the occasion of the clause referred to in these deeds and of similar clauses inserted in many commercial and legal documents at about that time. (Rec., 29, 35.) During the year following the dates of the two deeds, the Spanish government, in accordance with its previous announcement, demonetized the Mexican silver, and by 1896 the exchange of that money for a special Spanish colonial money had been completed. This special money, which was in circulation in Porto Rico until withdrawn under the Foraker Act and replaced by American money, was of silver and the unit was also the *peso.* As was the case with the Mexican *peso* one hundred of the new special colonial copper *centavos* made a new *peso.* (Rec., 35, 36, 56.)

But the new *peso* was worth about 5 per cent. more than the old Mexican *peso.* Its value in American coin was sixty cents. And everything in the record seems to indicate that the transaction involved on this

record was brought to a conclusion with the understanding that it would be fulfilled in the new special colonial Spanish money (Rec., 10); and that the difference of 5% in the value of the two systems of money was taken into consideration in the price for which the property was sold.

But after a small part of the indebtedness had matured and had been paid in the new Spanish colonial money, the American troops occupied the island. It was no longer a "province" of Spain as stated in the mortgage deed. And when the new civil government was formed American money became a legal tender and the special Spanish colonial money was retired. It is a matter of current history that the exchange of moneys was completed within the three months fixed in the act, that is to say, by July 31, 1900. (Rec., 56.) The special Porto Rican coinage, in which the parties undoubtedly intended the payments to be made, had all been retired and could no longer be had. The coinage of the United States was the only medium left in which payment of the indebtedness might be made. The appellee demanded payment in this money at the rate of one dollar for each *peso*. The appellants claimed the right to pay each *peso* in American money at its equivalent value, that is, sixty American cents for each *peso* of the indebtedness. The appellant claimed this right under the Foraker Act.

The provision in the Act of April 12, 1900, for retiring the new colonial currency and substituting American money in its place is as follows (Section 11):

> "That for the purpose of retiring the Porto Rican coins now in circulation in Porto Rico and substituting therefor the coins of the United

States, the Secretary of the Treasury is hereby authorized to redeem, on presentation in Porto Rico, all the silver coins of Porto Rico known as the *peso* and all other silver and copper coins now in circulation in Porto Rico. * * * at the present established rate of sixty cents in the coins of the United States for one *peso* of Porto Rican coin, and for all minor or subsidiary coins the same rate of exchange shall be applied. * * * and after three months after the date when this Act shall take effect no coins shall be a legal tender, in payment of debts thereafter contracted, for any amount in Porto Rico, except those of the United States. * * * *Provided, however,* that all debts owing on the date when this act shall take effect *shall be payable in the coins of Porto Rico now in circulation, or in the coins of the United States at the rate of exchange above named.*"

On behalf of the appellant it is now contended, as it was below both in the trial court and the Supreme Court, that this provision of the Foraker Act gave to the appellants a right, denied to them by the judgments in the courts below, to pay the indebtedness in question in coins of the United States at the rate of sixty cents of our money for each *peso* of the original debt.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT ENTERED BELOW.

The claim of the complainant below was for 1165 *pesos*. Of this sum 1031 *pesos* and 66⅔ *centavos* were to be paid to her, as arranged under the terms of the second deed of sale and mortgage, out of the installment of 3,000 *pesos* due on July 15, 1902; and the balance of her claim amounting to 133 *pesos* and 33⅓ *centavos* was to be paid out of the installment of that amount due under the mortgage on July 15, 1903. (Rec., 3.)

By the terms of the deed interest on the whole indebtedness was payable quarterly. When the regular quarterly interest became due on September 15, 1900, after the Congress in the Foraker Act had fixed the value of the local coinage and had provided for its retirement on July 31, and had made American money a legal tender for all purposes, the appellants offered to pay the amount of the quarterly interest in American money at the rate of sixty cents for each *peso* due, this being the rate of exchange provided in the act. (Rec., 4.) The complainant below declined to accept payment at that rate and demanded an American dollar for each *peso*. This having been refused by the appellants, she brought this suit on April 17, 1901, to enforce payment in accordance with her demands. (Rec., 37-38.) Her bill of complaint or statement of her demand involves not only the interest due in September, 1900, but also the subsequent installments of interest that became due under the terms of the mort-

gage after that date. She also set up her right to be paid the principal as it matured at the rate of one American dollar for each *peso*. (Rec., 6.)

Her claim under the mortgage was the smallest claim for which suit could then have been brought. Any other claim sued on at that time would have involved a demand in excess of $5,000. Apparently therefore there was an effort by the holders of the mortgage indebtedness to test the question and establish the law governing the indebtedness in a way that might exclude this court from passing upon the case. But as heretofore stated, the result to the appellants of the action in the lower court, if it be left undisturbed, will involve a sum largely in excess of the amount required to give this court jurisdiction. The suit was instituted in April, 1901. It is evident therefore that neither of the two installments of 3,000 *pesos* each due on July 15, 1901, and July 15, 1902, has been paid. Nor has the installment of 133 *pesos* and 33⅓ *centavos* due July 13, 1903, been paid. It is equally evident that the appellants have not paid the 5,866 *pesos* and 66⅔ *centavos* due to the children of Cartegena in two installments on July 15, 1903, and July 15, 1904. (Rec., 24.) Here then are principal sums still unpaid aggregating 12,000 *pesos*. Interest at 10% on this sum would make a total of about 15,000 *pesos* unpaid at the time the suit was brought. So far then as the appellants are concerned, the result of the judgment entered below is to fix the law of the case and to require them to pay about $15,000 in American money instead of $9,000, which would be the extent of their indebtedness if the rate of exchange provided in the Foraker Act is to

control as here contended. The judgments entered below, in effect, require the appellants to pay the entire unpaid balance of the debt at the rate of one dollar for each *peso*. The trial court's finding is that the "heirs of said Serralles are bound to pay in dollars *all* the installments arising from said contract." (Rec., 37.) The judgment of the Supreme Court is that the appellants should pay the "installments that are due" and those "becoming due later on" with interest thereon, "at the rate of 100 *cents* of the American money, which is the current money, for each *peso.*" It adjudges this to be *"the law governing the contracting parties."* (Rec., 63, 64.)

From the standpoint, therefore, of the lower courts the judgments entered therein involve for these appellants an amount much in excess of $5,000. It fixes the law for the payment of the entire unpaid balance of the debt.

But this court has jurisdiction on another and a still stronger ground. As heretofore shown, the act of April 12, 1900, provides in Section 11 that all debts existing when the act took effect "shall be payable in the coins of Porto Rico now in circulation or in the coins of the United States at the rate of exchange above named," that is to say, at the rate of sixty cents in American money for each *peso*. The power of the congress to pass such an act cannot be doubted. For in addition to its general power to coin money and regulate the value thereof, and to borrow money and emit bills and thus to establish a system of currency and to make it a legal tender for private as

well as public debts, it has also the special power to regulate the value of foreign coin. The Porto Rican coinage in circulation in the island when the Foraker act took effect was foreign coin and congress was the only lawful authority that could regulate its value. And congress having regulated its value and established the rate of exchange and having provided that all debts should be payable in Porto Rican coin then in circulation or in the coin of the United States at the rate of sixty cents for each *peso*, it was contended below and is now contended here that the appellants had a right, the Porto Rican coin having been retired and not being in circulation, to pay the indebtedness in the coin of the United States at that rate of exchange. The pleading for the appellants expressly sets up the act of the congress and asserts their (Rec., 11) right under it to pay the indebtedness at the rate of exchange there established. The pleading for the appellee admits (Rec., 4) the willingness and offer of the appellants to pay the indebtedness at its equivalent value in American money as thus regulated. The right of the appellants under this act of congress to pay the indebtedness at the rate of exchange established by it was thus clearly asserted at the trial. But this right was denied, the trial court holding, one of its members dissenting (Rec., 31), that (Rec., 37):

> it is plain and evident that the heirs of said Serralles are bound to pay in *dollars* all the instalments arising from the said contract and the interest on the same, for dollars are the money current at present in this island.

And its judgment to that effect is formally pronounced in the following language (Rec., 37):

> We adjudge that, declaring this action to have

> been well taken, we should likewise declare, and do declare, that the heirs of Don Juan Serralles y Colon are bound to pay to Dona Belen Esbri y Roube[illegible], widow of Don Nicolas de Cartagena y Mangual, the interest due up to date, arising from the contract of sale made by Cartagena and Serralles, on the 6th of October, 1894, in American money, which is the money in circulation at present in the commerce of this island, and that in due time the interest becoming due, as well as the share in the instalments, belonging to her by virtue of the said contract, falling due in the years 1902 and 1903, and which were adjudged to her in the division of the estate left by her mentioned husband, Senor Cartagena, be paid in the money current in commerce, of whatever coinage the money may be, which, with such character, be circulating or accepted in this island, at the rate of one hundred *cents* of the current money for each *peso;* and we condemn the heirs of said Serralles to the payment of the interest on the interests due and unpaid, and to the payment of the costs. Thus, by this, our judgment, we pronounce, command and sign it.

An appeal having been taken to the Supreme Court of the island, the right of the appellants to pay the indebtedness in American coin at the rate of exchange established by law was still more clearly presented. It was contended (Rec., 38) that the judgment of the trial court violated the terms of Section 11 of the act of April 12, 1900. On the appeal papers of the Hon. Jose de Guzman Benitez, counsel for the appellants in the Supreme Court of the island, it is alleged that (Rec., 43):

> The said Section 11 provides in an absolute and positive manner that all debts pending when the said law goes into effect shall be payable in the money of Porto Rico at present in circulation or in the money of the United States at the rate of sixty

> cents of the United States currency for each *peso* of the Porto Rican currency. It is therefore evident that a violation of the said law has been committed in the judgment.

In his reply to the appeal papers the Hon. Herminio Diaz Navarro, counsel for the widow Esbri, refers to this provision of law as a "despotic ukase" and claims that it was not infringed by the judgment of the trial court. (Rec., 49.) The Supreme Court of Porto Rico disposes of the law by saying, the two American justices dissenting (Rec., 64), that it has no application to the case (Rec., 62); and its judgment is that (Rec., 63):

> there is nothing more logical or more proper in the fulfillment of the contract, than that the heirs of Serralles pay now the instalments that are due, to the legal representatives of the vendor, Jose Nicolas de Cartagena, at the rate of 100 cents of the American money, which is the current money, for each *peso* of the Mexican currency; and the instalments and revenues (interest) becoming due later on, in the money which may be circulating when they are due, in the same proportion as has been established, in the strict performance of the contract, which is the law governing the contracting parties.

It thus appears that Section 11 of the Act of April 12, 1900, was set up by the appellants in the courts below as the basis of the right claimed by them to pay the indebtedness in question in American money at the rate of exchange established therein. This right was denied by the lower courts. The record therefore presents a case in which this court may take jurisdiction on appeal. Section 35 of the same act provides:

> That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico

> • • • shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States, and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or *an Act of Congress is brought in question and the right claimed thereunder is denied.*

The matter is therefore properly before this court for review.

Crowley v. *United States*, 194 U. S., 461.
Rodriguez v. *United States*, 198 U. S., 156.

II.

THE COURTS BELOW HAVE DISREGARDED THE PLAIN INTENTION AND PURPOSE OF THE PARTIES TO THE CONTRACT.

The opinions and judicial acts of the Supreme Court of Porto Rico are entitled always to respectful consideration. Its members, both Porto Rican and American, are men of learning and of high character. But it is most difficult to understand their action in this case. The conclusion arrived at seems as whimsical as it is inequitable. And there is no train of thought or course of reasoning in their final judgment to indicate how the judicial mind reached so extraordinary a result. Without explanation of any kind the *centavo* is simply translated into a *cent*. All the world knows that it is not a *cent*. It has never been more than 6/10 of a *cent*. To call it a *cent* therefore is to add 66 2/3 per cent. to its value. To call it a *cent* in this case turns a debt of 18,000 *pesos* into one of 18,000

dollars. It increases the debt actually incurred by 66 2/3 per cent. This is done unaccompanied by any appeal to the reasoning faculties. No foundation is laid for it in logic or argument.

The agreement between the contracting parties was that the debt should be paid when it matured in money in circulation "*in this province,* at the rate of one hundred *centavos*" for each *peso.* There is no longer any "province." And so the court calls it an "island." (Rec., 37.) There are no longer any *centavos.* And the court therefore calls them *cents.* There are no longer any *pesos.* And so the court in its final order says (Rec., 37):

> "it is plain and evident that the heirs of said Serralles are bound to pay in *dollars* all the installments arising from said contract or the interest on the same, *for* DOLLARS *are the money current at present in this island.*"

Had the Spanish government afterward abolished the special colonial currency announced just before this contract was entered into and put into effect just afterward, and in its place had extended its own system of currency to Porto Rico, what would have been the result? The Spanish *peseta,* of the nominal value of twenty cents in American money but for many years worth only fifteen cents in actual exchange, is made up of one hundred *centesimos.* The same alchemy that can turn a *centavo* into a *cent* and a *peso* into a *dollar,* could with even greater facility turn a *centavo* into a *centesimo* and a *peso* into a *peseta.* This would change the debt of 18,000 *pesos* or $10,800, into one of 18,000 *pesetas* or $3,600 nominally, and 25 per cent. less at the present value of a *peseta* in the

money exchanges of the world. The judgment of the trial court would then have been that "it is plain and evident that the heirs of Serralles are bound to pay the debt in *pesetas,* for *pesetas* are the money current *at present* in this province." And the judgment of the Supreme Court of the island would be that there could be "nothing more logical or more proper in the fulfillment of the contract than that the heirs of Serralles should pay the debt at the rate of 100 *centesimos,* which is the money current, for each *peso.*" It is not to be forgotten also that there are one hundred *centimes* in the French *franc* and one hundred *pfennigs* in the German *mark,* a fact which suggests interesting possibilities of rapid changes in the amount of this indebtedness, should the future and the fortunes of war bring this island under the sovereignty of those nations.

Courts of justice throughout the world may differ in their notions as to what kind of evidence may or may not be admitted to explain and aid in the interpretation of a written contract. But all courts agree that when construing a written document the actual intention of the parties must control, whether it be ascertained from the document itself or is made clear by the aid of outside evidence. That certainly is the test that should be applied to the deed and mortgage of October 6, 1894.

The document itself when examined from that point of view appears to be an ordinary purchase and sale of real estate. It was clearly not intended to be a speculation in the fluctuations in value of the money that might be in circulation in Porto Rico.

The deed is subdivided into clauses. The first and second clauses embrace matters of inducement describing the parties and their capacities and the estate to be conveyed with a description of the improvements thereon. The third clause is entitled "Title." In it is set forth the ownership of the property by the grantors in their respective proportions. The fourth clause is entitled "Incumbrances." It sets forth that there are no incumbrances or liens of any kind upon the property. The fifth clause is entitled "Value." Here by mutual agreement of the parties the *value* of the undivided interest to be conveyed "has been fixed at the sum of eighteen thousand *pesos* current money," (Rec., 22) that is to say, in money then current. The provision of the sixth clause (Rec., 23) is that the property shall remain "mortgaged pending the payment of the total *value* of said sale." In the ninth clause are transcribed portions of the deed of September 1, 1894. The seventh clause of that deed thus transcribed is a declaration by the contracting parties that the price for which the sale is made is the "*just and true value* of the alienated interest in the plantation," and they "renounce all claim as regards the price," that is to say, they renounce all disputes and controversies as to its value. (Rec., 25.) The eighth clause thus transcribed throws a strong light upon the intention of the parties to the transaction. For here not only do the parties again declare the *value* of the interest conveyed to be eighteen thousand *pesos* of the money current at the time of the transaction, and renounce all right to any other valuation, and all right of action leading to a change of valuation on any ground (Rec., 26), but they agree, in accordance with the re-

quirement of Art. 27 of the mortgage law, that in case the property has to be judicially sold by reason of the failure of the debtors to pay the mortgage indebtedness, the "said price," that is to say, eighteen thousand *pesos* of the money current on the date of the transaction, shall be the basis of the judicial sale. In the translation of the first deed this eighth clause is as follows (Rec., 18):

> For the purpose of article 127 of the said mortgage law, the parties to the transaction declare the price of the share in the estate mortgaged, to be eighteen thousand *pesos, money current,* and they renounce and waive all claims to a new appraisement or action for the purpose, they being fully aware that that is the *value* that shall serve as basis in the public sale that shall be held if the obligation is not paid, and its payment be demanded judicially.

There is no reference here to the money current at the time the sale may take place. And if the property were now sold under judicial proceedings for that purpose there can be no doubt that the basis of the sale would be an amount in American money equivalent to the *value* of the property at the date of the deed. If the appellants were not able to respond to any personal judgment that finally may be rendered against them in this action, and the owners of the indebtedness should bring an action for the sale of the property itself, it is certain that they would have to account to the appellants for all moneys received from the sale over and above the equivalent *value* in American money of the 18,000 *pesos* of the indebtedness.

It thus appears that this transaction, like those of a similar nature that take place daily in any community,

was a purchase and sale and not a mere gambling transaction, such as it has been turned into by the decisions of the courts below. Sr. Serralles desired to buy this property and Sr. Cartagena to sell it. A price was agreed upon, and the transaction was concluded in good faith by both parties on the theory that the property had a certain *value,* and that upon the payment by Sr. Serralles of this *value* his obligations would be extinguished. They deliberately fixed the value and provided that in case of a judicial sale that value should be its basis. They expressly renounced the right by any proceeding to establish another and different value. Their intention and their good faith one to the other appear throughout the document. And this intention and good faith appear no less clearly in the clause (Rec., 46, 47) providing for payment in money in circulation "*in this province,* at the rate of one hundred *centavos* of the money in circulation, for each *peso.*" To get from this clause the theory that the payment was to fluctuate with possible changes of sovereignty, and that the indebtedness was to be largely decreased or increased as this nation or that took possession of the island, is to change the transaction into a mere gambling transaction of a most cumbersome and extraordinary kind. At that time there were no clouds upon the Spanish horizon and the war that occurred four years later and the resulting change in the status of the Spanish colonies were things that had not been thought of. This is shown by the use of the phrase "*in this province,*" from which the indisputable inference must be drawn that the parties to the contract had in mind only a change of currency by

the Spanish government and not by a foreign government occupying the island as the result of war.

The only outside evidence that was admitted to aid in the interpretation of the contract was that relating to a change in the currency. Both the lower courts find as a fact that shortly prior to the date of the transaction the Spanish Government had announced such a change. And it may be safely inferred from the finding of the court in this connection (Rec., 56) that the announcement also embraced a statement of the character and value of the new coinage. (Rec., 35.) It had been announced in the "Official Gazette" of Madrid, which was and still is the official source of information as to all matters of an administrative, legislative or judicial character. Prudence, therefore, suggested that a clause should be inserted in the deed providing for the payment of the several installments as well as the interest thereon in the new money. And similar clauses as heretofore shown, were commonly inserted in legal documents executed at that time in Porto Rico.

Like conditions would doubtless give occasion for the insertion of similar clauses in legal documents executed in this country. But it is a strange and curious method of judicial interpretation to pass beyond the immediate and natural cause for the insertion in the deed in question of such a clause, and give to it a universal application; to apply it under conditions that by no possibility could have been in the contemplation of the parties at the time. The dissenting judge in the trial court gives apt expression to this thought when he says (Rec., 32):

> If we * * * examine the literal meaning and the spirit of the contract, even then the plaintiff's claim appears to be unjustified. The literal meaning is not by itself sufficient to determine the intention of the parties, which must prevail over the letter of the contract; and said intention, never, and in no manner whatsoever, can have had relation to the present condition of things, which has come to all like a dream, even to those that were most awake.

Even if the clause in question be construed literally the judgments of the lower courts are clearly erroneous. For the application of the clause is limited to money in circulation *"in this province."* There being no longer any province the clause cannot be made literally effective. It also requires the payment to be made in *centavos.* The *centavo* having been withdrawn from circulation manifestly the payment cannot be made in that coin. The contract therefore cannot be carried out literally. It must therefore be enforced in accordance with the intention of the parties and in justice to both. As the transaction was a sale of property for an agreed *value,* every condition would be satisfied by the payment to the vendor of such *value.* This is the simple justice of the matter. To go beyond such an adjustment of the relations between the parties will work an extraordinary inequity to the vendee. And it cannot be done without a judicial announcement that a *centavo* is equivalent to a *cent,* a conclusion which cannot be supported from any point of view.

In this connection it may be interesting to examine very briefly those articles of the Spanish law that are referred to in the judgment of the Supreme Court of Porto Rico in connection with its interpretation of this

contract. They are all set forth here, from the War Department's translation of the Civil Code, in the order of the numbers of the several articles cited:

Art. 1091: Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations.

Art. 1115: If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

Art. 1255: The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order.

Art. 1256: The validity and fulfillment of contracts cannot be left to the will of one of the contracting parties.

Art. 1258: Contracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences which, according to their character, are in accordance with good faith, use, and law.

Art. 1281: If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed.

If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail.

Art. 1283: However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract.

Art. 1284: If any stipulation of a contract

should admit of different meanings, it should be understood in the sense most suitable to give it effect.

Art. 1289: When it should be absolutely impossible to decide the doubts by the rules established in the preceding articles, if they deal with incidental circumstances of the contract, and said contract involves a good consideration, they shall be decided in favor of the smallest transmission of rights and interests. Should the contract involve a valuable consideration, the doubt shall be decided in favor of the greatest reciprocity of interests.

Should the doubts, the decision of which is referred to in this article, involve the principal object of the contract so that the intention or will of the contracting parties cannot be ascertained, the contract shall be void.

Art. 1445: By a contract of purchase and sale one of the contracting parties binds himself to deliver a specified thing and the other to pay a certain price therefor in money or in something representing the same.

Art. 1449: The determination of the price can never be left to the judgment of one of the contracting parties.

Art. 1500: The vendee is obliged to pay the price of the thing sold at the time and place stipulated in the contract.

If the time and place should not have been fixed, the payment must be made at the time and place where the thing sold is delivered.

These articles of the Spanish Civil Code then and now in force in Porto Rico, seem to afford an admirable guide for the construction of contracts. Running through them is the general principle that contracts are to be construed according to the intention of the contracting parties. Some of them seem to apply with great force to the question presented on this record. If the par-

ties contracted as the lower court thinks they did, it was a mere wager, contrary to good morals and public law and therefore in violation of Article 1255, as contended by appellants below. On the mere construction of the contract the second clause of Article 1281 would seem to be of controlling force. The same may be said even more strongly of Articles 1284 and 1289. And Article 1283 is certainly as applicable to this case as to the decision by the lower court hereinafter referred to.

All these articles were cited on behalf of appellants in the lower court. But that court apparently was of the opinion that there was no room for construction and it refused to apply these principles of law to the deed before them. The trial court regarded it as "plain and evident" and the Supreme Court as altogether "logical and proper" that this debt originally of 18,000 *pesos* should now be paid off with as many American gold dollars. For the American system of coinage had taken the place of the colonial coinage and has current in the island. The court indulges in no effort to demonstrate its conclusions. It simply regards it as clear, "there being no doubt as to the intention of the parties to the contract" (Rec., 63) that American dollars must now be paid for *pesos*.

As stated in the preceding pages many contracts entered into in Porto Rico at about that time embodied clauses substantially similar to the one here. This appears (Rec., 29) from the statements of certain prominent merchants who testified to that effect. Coupled with their testimony is the further statement that such contracts were universally satisfied among merchants

in the equivalent value of American money. The decision of the lower courts in this case, if not set aside, is likely however to produce a different attitude on the part of those to whom this decision will work an advantage in the fulfillment of contracts to which they are parties. The result is so immoral from the standpoint of fair dealing between men that the importance of the contention here made on behalf of the appellants cannot well be overestimated.

The only decision bearing upon this qustion that has come to the writer's attention is in a case decided, curiously enough, by the Supreme Court of Porto Rico. It is the case of *Cayo* v. *Balseiro y Georgetty.* It is available to the writer only through a reference to it contained in the dissenting opinion by Mr. Justice Sulzbacher in this case. (Rec., 65 at p. 70.) It there appears that the contract in question, which was dated about the time of the contract here involved, contained the following clause:

> And the balance of the price amounting to twenty thousand pesos current money at the time the same becomes due and payable shall be paid in gold or silver to the exclusion of all paper money.

As the case is stated by the dissenting justice, it appears that the creditor contended that all payments made after the date of the Foraker act should be made in American dollars instead of colonial *pesos.* The Supreme Court of Porto Rico held otherwise, and the chief justice is quoted as making the following observations in the case (Rec., 71), which apparently have lost something of clearness in the translation:

> The change of money having been established without considering the difference which could re-

sult in the relative value between the one and the other, the stipulation between the parties only referred to a special and particular case,* and could have no application to an incident entirely different and to one which the parties could not foresee; for such would be beyond the limits of human prevision.

For this reason such events could not enter into the calculations and deliberations of the contracting parties that a change of money would be established five years thereafter by the American Government in consequence of the change of sovereignty which happened in this island; because once provincial money was substituted for Mexican money, that thereafter the currency of the United States of America, with a discount of forty per cent. of its value, should take its place. Hence on account of this extraordinary and unexpected event, Article 1283 of the Civil Code is applicable which says: "However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract."

Here it appears that the court gave application to Article 1283 of the Civil Code (*supra*). And it is difficult to see how the same court could have rejected that article as a sufficient basis for the contention made before it by the appellants in this case.

In his dissenting opinion in the Supreme Court of Porto Rico (Rec., 65) Justice Sulzbacher seems to regard one phase of the judgment of the majority in his court as being, in effect, a dismissal of the appeal from the trial court, because of some alleged insufficiency or

*The chief justice, as appears from the judgment in this case where he mentions the case cited (Rec., 63) here refers to the change from Mexican to the new colonial currency that had been announced by the Spanish government.

lack of clearness on the appeal papers. And he makes note of the fact that notwithstanding the dismissal, as he regards it, the judgment of the majority goes on to dispose of the case upon its merits. He examines the point at some length and in an interesting discussion of the question, contends that with the new order of things in Porto Rico, the Supreme Court of the island ceased to be a court of cassation and became a court of appeal like American appellate tribunals.

It does not seem necessary to go into that question here. The majority in the lower court apparently did not regard their action on the point in question as a dismissal of the appeal. Their ruling is (Rec., 61) only that "it is not proper to admit the appeal *in so far as* it is based on Subdivision 7 of Article 1690." They then go on and discuss and decide the case on its merits. They regarded the case as being fully before them and they fully passed upon the main question in it and thus fixed the law for the payment of the whole indebtedness, including the portion not actually embraced on the face of the pleadings. It is assumed therefore that the merits of the case having been fully gone into in the court below, the case is now open to be fully reviewed here.

The judgment of the lower court should be reversed.

Respectfully submitted.

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